

The Protocol on Trafficking in Persons and Transplant Tourism

by David Matas

(Remarks prepared for a side event to the Conference of States Parties, 7 October, 2014, Vienna, Austria)

Does the Protocol on Trafficking in Persons of the Convention on Transnational Organized Crime encompass transplant tourism? That is a question I want to address. My answer to that question is yes. Getting to that answer though takes some explaining.

I should state up front that, though this question is general, I approach it from quite a particular perspective. I wrote a report with David Kilgour in June 2006 which concluded that prisoners of conscience in China, practitioners of the spiritually based set of exercises Falun Gong, were being killed for their organs which were being sold at high prices to transplant patients, mostly transplant tourists. We produced a second version in of our report in January 2007 and a third version in book form under the title *Bloody Harvest* in November 2009. Our report prompted the founding of a non-governmental organization Doctors against Forced Organ Harvesting or DAFOH. I and Dr. Torsten Trey, the founder of DAFOH, co-edited a book of essays on organ transplant abuse in China published in August 2012 under the name *State Organs*. Ethan Gutmann, in research with Jaya Gibson, announced in June 2010¹, and, in a book titled *The Slaughter* published in August 2014, wrote that the killing of innocents for their organs had spread from Falun Gong to Tibetans, Eastern Lightning house Christians and Uighurs.

Falun Gong is a set of exercises with a spiritual foundation begun in 1992 with the teachings of Li Hongzhi. It was initially encouraged by the Communist Party of China as beneficial to health. However, its increasing popularity led the Party, out of jealousy and fear for its

¹ Ethan Gutmann, "China's Policies Toward Spiritual Movements" Congressional Executive Commission on China, Roundtable discussion, Friday, June 18, 2010; Julia Duin, "China accused of vast trade in organs", Washington Times April 27, 2010

ideological supremacy, to ban the practice and to insist that the practitioners recant. Those who did not recant were tortured. Those who did not recant after torture disappeared. The disappeared, in the hundreds of thousands, became a vast forced organ donor bank. Transplant tourism into China became a billion dollar business.

After the report David Kilgour and I published, the Government of China changed its organ transplant system to give a priority to nationals over foreigners. A number of countries changed their laws and policies in ways that penalized or discouraged transplant tourism into China. The flow of transplant tourists into China diminished, but did not stop.

Until May 2014, the Omar Healthcare Service website promoted transplant tourism into Tianjin, China. The website was taken down only after a public protest letter by The Transplantation Society in February 2014. The 21st Report of the Malaysian Dialysis and Transplant Registry 2013 sets out in Chapter 13, Renal Transplantation, that there were nine Malaysian patients who obtained transplants in China in that year².

A delegation from DAFOH met in Geneva Monday, December 9, 2103 with the Office of the United Nations High Commissioner for Human Rights to present a petition with nearly 1.5 million signatures from 53 countries and regions asking the High Commissioner Mme Navi Pillay to

1. call upon Government of China to end immediately the forced organ harvesting from Falun Gong prisoners,
2. initiate an investigation which can lead to the prosecution of the perpetrators of this crime against humanity, and
3. call upon the Government of China government to end immediately the brutal

² http://www.msn.org.my/Doc/PublicDoc_PB/Publication/mdtr21th/CH_13.pdf

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persecution of Falun Gong.

One of the people in the Office of the High Commissioner with whom we met suggested we contact the United Nations Office of Drugs and Crime (UNODC) in Vienna. We followed up on that suggestion on January 1, 2014, by contacting Mirella Dummar Frahi, Civil Affairs Officer, Advocacy Section, UNODC, in Vienna, asking for a meeting on March 21st.

Mirella Frahi wrote back January 30th confirming the requested meeting. She wrote:

"I am pleased to confirm that it will be possible to arrange a meeting with UNODC on Friday 21st March. Please indicate your preferred time and the name of the people accompanying you. Thank you of your interest and kind regards,"

I wrote back to Ms. Frahi on January 31st indicating who would attend the meeting and the preferred time. Besides myself, there was an international lawyer for DAFOH from Spain and a delegation of four, one lawyer and three doctors, from the Taiwan Association for International Care of Organ transplants (TAICOT). After our tickets had been booked, on March 4, 2014, over a month after the initial confirmation, Mirella Frahi wrote back saying:

"With reference to your request for meetings on 21 March 2014, I regret to inform you that owing to our forthcoming major Commission meeting on Narcotic Drugs from 13-21 March that it will be challenging for us to tie down a convenient time to meet. I would suggest that we take contact following the Commission meeting on this issue."

I reached her by phone and sent a follow up e-mail March 12 stating

"Our group will be in Vienna next week Thursday and Friday March 20 and 21 and would be available to meet on short notice."

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On March 13, I passed on this message from my Asian colleagues:

"Please let them know we delegation from Asia already finalized our air ticket and lodging in Vienna for this meeting, it will be improper to cancel this meeting by such short notice."

These e-mails prompted a response from an unnamed superior of Ms. Frahi who wrote to me on March 14:

"Unfortunately, as Ms. Dummar Frahi has indicated previously, she will not have the time to meet with you and the Asian delegation."

Having already booked our tickets, we all came to Vienna. I took advantage of our being there to meet with a Permanent Mission to the UN in Vienna about the matter.

My colleagues in TAICOT went to the offices of UNODC on March 21st and attempted on the spot to meet with relevant officials. This effort prompted a response the same day from Mr. Ilias Chatzis, Chief, Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, United Nations Office on Drugs & Crime, Vienna. He wrote:

"I would like to thank you for your message and for the interest in our work. I understand that you have been trying to reach me today. However, I had no earlier knowledge of your presence in Vienna nor of the issues you wanted to discuss with me. A meeting would also not be productive as my Section's work does not include what you refer to as organ harvesting nor the other issues covered in your e-mail. My Section covers the UNTOC Protocols on Trafficking in Human Beings and on Migrant Smuggling. I am sorry that I cannot be more helpful at this stage."

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Well, that seemed pretty straightforward. However, I thought I better get clarification from the person in charge.

I then wrote to Yury Fedotov, Executive Director UN Office of Drugs and Crime Vienna, Austria, on July 30th asking for clarification. I wrote:

"As a result of the exchange of e-mail attached between Mr. Ilias Chatzis, Chief, Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, United Nations Office on Drugs & Crime and Dr. Alex Chih-Yu Chen, International Liaison Officer, Taiwan Association for International Care of Organ Transplants, which has been drawn to my attention, I request from the UN Office of Drugs and Crime a clarification. Does the Office

a) take the position that transplant tourism and the sourcing of organs from non-consenting persons for sale are subject matters that

i) fall within the scope of the Protocol on Trafficking in Persons to the Convention on Transnational Organized Crime or

ii) do not fall within the scope of the Protocol or

b) take no position on these matters?"

On August 8th, 2014, on behalf of Mr. Fedotov, Mr. Tofik Murshudlu, Officer in Charge, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime responded by quoting extensively from the Protocol but saying nothing more. He wrote:

"I refer to your email to Mr. Yury Fedotov on 28 July 2014. Our leading instrument is indeed the Trafficking in Persons Protocol to the Organized Crime Convention.

According to Article 3 (a) of that Protocol,

'... 'trafficking in persons' shall mean the recruitment, transportation, transfer,

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harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, ... the removal of organs'.

The Protocol also requires, in Article 5 (1), that

'each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally'.

Therefore, conduct that fulfils this three-pronged definition is considered trafficking in persons for the purpose of organ removal.

As for consent, the Trafficking in Persons Protocol actually says in Article 3 (b) that

'...the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used'.

For children, that is persons under the age of 18, consent is actually always irrelevant."

That, of course, amounted to a lot of words saying nothing. So the original question remained.

The United Nations Office on Drugs and Crime website has this entry:

"... demand for organs has outstripped supply, creating an underground market for illicitly obtained organs.

Desperate situations of both recipients and donors create an avenue ready for

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exploitation by international organ trafficking syndicates. Traffickers exploit the desperation of donors to improve the economic situation of themselves and their families, and they exploit the desperation of recipients who may have few other options to improve or prolong their lives. ... One factor that is distinct in this form of trafficking in persons is the profile of culprits; while some may live solely from criminal trafficking activities, others may be doctors, nurses, ambulance drivers and health care professionals who are involved in legitimate activities when they are not participating in trafficking in persons for the purpose of organ removal.

... The Trafficking in Persons Protocol supplementing the Transnational Organized Crime Convention includes trafficking in persons for the purpose of organ removal.

UNODC response

Trafficking in persons for the purpose of organ removal was on the agenda of the Working Group on Trafficking in Persons established by the Conference of Parties to the Organized Crime Convention at its fourth session, from 10 to 12 October 2011. The Working Group recommended that States make better use of the Convention and Trafficking in Persons Protocol in combating trafficking in persons for the purpose of organ removal.

The Working Group recommended that States parties to the Convention should encourage relevant United Nations entities, including UNODC, to gather evidence-based data on trafficking in persons for the purpose of organ removal, including root causes, trends and *modus operandi*, with the aim of facilitating better understanding and awareness of the phenomenon while recognizing the difference between trafficking in organs, tissues and cells.

The Working Group also requested UNODC to develop a training module against trafficking in persons for the purpose of organ removal, and provide technical assistance, especially in regard to investigation, exchange of information and

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international legal cooperation."

It has been suggested that there is need for an international treaty banning transplant tourism. It may be simpler, as the UNODC website suggests, just to make better use of the Trafficking in Persons Protocol to the Transnational Organized Crime Convention.

The Global Report on Trafficking in Persons 2012 published by the UN Office on Drugs and Crime³ states

"Organ trafficking is not classified as human trafficking. For an act to be considered trafficking in persons, a living person has to be recruited by means of force or deception for the exploitative purpose of removing an organ. There is a large grey area between licit organ donations and the trafficking of persons for organ removal."

Within this "grey area" could be included the killing of prisoners of conscience for their organs to be sold at high prices to transplant patients as human trafficking.

In answering the question whether we need a new treaty or whether we can interpret the existing treaty to apply to transplant tourism, the experience of the Council of Europe is instructive. The Council of Europe had a Convention on Action against Trafficking in Human Beings dating from 2005 which applied to trafficking in organs. The Convention defined "Trafficking in human beings" to mean:

"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud,

³ At page 43

http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf

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of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, ... the removal of organs;"⁴

The language of that Convention is identical to the UN Protocol. The Council of Europe, despite that Convention, saw fit to approve yet another Convention titled the Convention against Trafficking in Human Organs, opened for signature in July of this year, 2014. That Convention can be signed by the member States of the Council of Europe, the European Union and the non-member States which enjoy observer status with the Council of Europe. It is also can be signed by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers.⁵

The existence of this second Council of Europe Convention raises three questions. One is whether there is a need to replicate the second Council of Europe Convention at the United Nations. If the Council of Europe felt the need for a more specific Convention directed specifically to organ trafficking despite an existing Convention on human trafficking which encompassed organ trafficking, should not the UN also have the same need?

Second, why do we even need a UN Convention on organ trafficking when the Council of Europe Convention is open for signature by all states? Would it not be simpler just to urge states to sign on to the Council of Europe Convention?

⁴ Article 4(a)

⁵ Article 28

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Third, do any of these Conventions now encompass transplant tourism? Is it necessary to have a third Council of Europe Convention and another UN Protocol or treaty to address specifically transplant tourism?

To a certain extent, these questions are bound up with a larger question which bedevils international treaty negotiation. Some argue that the international community is better off with a focus on implementation rather than instrument proliferation. Others argue that a wide variety of specific new international instruments provides detail. States which may refrain from signing on to one treaty may be willing to sign on to another similar, but not identical, overlapping treaty. NGOs may be more mobilized to advocate adherence to a specific treaty which coincides with their priorities than to a general treaty which encompasses their priorities as only one amongst many matters.

The answer to the first question, why a second Council of Europe Convention, is, to a certain extent, answered by the preamble to the second Convention. One preambular paragraph states:

"Determined to contribute in a significant manner to the eradication of the trafficking in human organs through the introduction of new offences supplementing the existing international legal instruments in the field of trafficking in human beings for the purpose of the removal of organs;"

The first Convention states simply in Article 18:

"Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally."

Article 4 contains the definition of trafficking, which included organ trafficking.

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This provision is similar to a provision in the UN Protocol. The Protocol states:

"Article 5

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally."

The second Council of Europe Convention is far more specific. The specific penalty provisions are set out below:

"Article 4 - Illicit removal of human organs

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:

- a. where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
- b. where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;
- c. where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.

2 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply paragraph 1.a of this article to the removal of human organs from living donors, in exceptional cases and in accordance with appropriate safeguards or

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consent provisions under its domestic law. Any reservation made under this paragraph shall contain a brief statement of the relevant domestic law.

3 The expression 'financial gain or comparable advantage' shall, for the purpose of paragraph 1, b and c, not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs.

4 Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law the removal of human organs from living or deceased donors where the removal is performed outside of the framework of its domestic transplantation system, or where the removal is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavour to apply also Articles 9 to 22 to such offences.

Article 5 - Use of illicitly removed organs for purposes of implantation or other purposes than implantation

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the use of illicitly removed organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

Article 6 - Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law

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Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law, when committed intentionally, the implantation of human organs from living or deceased donors where the implantation is performed outside of the framework of its domestic transplantation system, or where the implantation is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavour to apply also Articles 9 to 22 to such offences.

Article 7 - Illicit solicitation, recruitment, offering and requesting of undue advantages

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1, or Article 5 and where

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appropriate Article 4, paragraph 4 or Article 6.

3 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

Article 8 - Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

- a. the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4;
- b. the transportation, transfer, receipt, import and export of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4."

Also worthy of note are the jurisdictional provisions. The first Council of Europe Convention provides:

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"Article 31 - Jurisdiction

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

d by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;"

The second Council of Europe Convention provides:

"Article 10 - Jurisdiction

1 Each Party shall take such legislative or other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

d. by one of its nationals; or

e. by a person who has his or her habitual residence in its territory.

4 For the prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1. d and e of this article is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or the laying of information by the State of the place where the offence was committed."

Both Council of Europe Conventions address specifically then extraterritoriality. Both Council of Europe Conventions though limit extraterritoriality to nationals. They do not set out universal jurisdiction offences.

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The UN Protocol does not address jurisdiction, but rather incorporates the UN Convention provisions on jurisdiction. The Protocol states:

"Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein."

The United Nations Convention against Transnational Organized Crime provides:

"Article 15

Jurisdiction

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory;"

On extraterritoriality, the UN Convention and Protocol are then different from the two Council of Europe Conventions. The Council of Europe Conventions require it, using the word "shall". The UN Convention and Protocol allow it but do not require it, using the word "may".

There is one other piece in this puzzle, the definition of transplant tourism. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism defines transplant

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tourism to be travel for transplantation which

"involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population."

With this background and a focus on China in mind, let us return to the three questions posed, whether we can rely on the Council of Europe Conventions or need a UN Convention, second whether the existing UN Protocol will do, thirdly whether the existing instruments encompass transplant tourism.

The answer to the third question is straightforward. It may well be that not every aspect of transplant tourism is encompassed by the two Council of Europe Conventions and the UN Protocol. Nonetheless, all these instruments, I am confident, encompass travel for transplantation which involves the purchase of an organ sourced from a prisoner of conscience killed for the organ.

The answers to the first two questions present competing considerations. China is a party to the Trafficking in Persons Protocol to the Transnational Organized Crime Convention, but with the reservation that it is not bound by paragraph 2 of Article 15 of the Protocol. Paragraph 2 of Article 15 of the Protocol provides:

"Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those

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States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court."

Just relying on the UN Protocol, rather than the Council of Europe Conventions or a new UN Convention, has both the advantage and disadvantage of working with an existing instrument to which the China is a party, albeit with a reservation. The Government of China has shown no interest in ratifying the second Council of Europe Convention and presumably, while the current abuse continues, would not ratify a new UN Convention similar to the second Council of Europe Convention.

The Government of China, one should not be surprised, does not acknowledge its institutions kill prisoners of conscience for their organs, although there has been some leaked internal debate within the Communist Party, at the time of the deposition of Bo Xilai, whether to admit the abuse and pin the blame on him. The Government of China though does admit that prisoners are sources of organs. The Government of China claims that all the prisoners sourced for their organs have been sentenced to death. Falun Gong in detention are mostly not convicted of anything or, if convicted at all, are punished for the vague offense of disrupting social order which is not a death penalty offense.

In any case, sourcing of organs from prisoners sentenced to death is a violation of medical ethics. Both The Transplantation Society and the World Medical Association have concluded that the coercive situation in which a person sentenced to death finds himself means that true voluntariness is not possible.

Selling organs of prisoners to transplant tourists, no matter what the sentence of the prisoners or why they are being held in detention, violates international standards,

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something the Government of China would likely acknowledge. The response of the Government of China to the abuse characterized this way is that eventually it will cease as China shifts to an organ donation system.

This response is problematic for several reasons. Abuse should not end sometime in the indefinite future. It should end now.

Second, the Government of China response comes without disclosure consistent with international standards of transparency, traceability and accountability about what is actually happening. The Government of China should make original data available of sources and volumes of transplants rather than, as now, uttering a sequence of mutually inconsistent political pronouncements on the matter.

Third the Government of China asserts that prisoners should be free to donate their organs, including prisoners sentenced to death, and that the Government will in the future include prisoner sourcing among its voluntary donation statistics. These assertions falsify the claim of a shift from prisoners to voluntary donors as a source of organs.

The Government of China, in sum, is so steeped in abuse today and so prone to engage in abuse for the indefinite future, that it is unlikely to sign on either to the second Council of Europe Convention or any new UN instrument. It is moreover probable that the Government of China will contest any interpretation of the current UN Protocol which brings under the jurisdiction of the UN Office on Drugs and Crime the transplant misbehaviour of the Chinese Government.

A focus on the UN Protocol has the potential advantage of joining directly with Government

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of China the issue of transplant abuse in China. It has the disadvantage of stalling progress because the international community gets mired in this debate with China. Alternatively, given the geopolitical weight of China and a desire not to annoy its Government, the international community may make every effort to avoid a confrontation with the Government of China by avoiding the issue.

The run around we got from the UN Office when simply attempting to arrange an appointment to discuss the matter, as well as the initial statement from the Human Trafficking section of the UN Office for Drugs and Crime that their "work does not include" addressing the sale to transplant tourists of organs sourced from prisoners of conscience may not have been influenced by the Government of China either directly or through fears of what that Government might think. Nonetheless, this sort of behaviour is not a good sign.

The UN Protocol only allows extra-territoriality; the Council of Europe Conventions require it. A national of a signatory to one of the Council of Europe Conventions who has engaged in organ brokerage in China must be prosecuted in the signatory state. A national of a signatory to the UN Protocol who has engaged in organ brokerage in China may be but does not have to be, according to the UN Protocol, prosecuted in the signatory state. The UN Protocol though is not an obstacle to extra-territoriality, even going beyond nationals of the signatory state.

The advantage of a focus on the existing Council of Europe Conventions and the drafting of a new UN Convention is that the Government of China is left on the sidelines. The problem of transplant tourism into China, after all, is not just a problem of insiders, those in China, but also a problem of outsiders, those coming into China. The problem of outsiders, those travelling to China for transplants, can be addressed directly without Government of

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China interference, by a focus on the existing Council of Europe Conventions and the drafting of a new UN Convention.

Addressing transplant abuse in China has to be the number one priority of the global community concerned about the transnational crime of organ trafficking. Nowhere other than China is the state apparatus actively engaged in transplant abuse. Nowhere other in China are the numbers of cases of transplant abuse so large. Nowhere other than China is coverup so systematic, the rejection of transparency so thorough. Nowhere other than China are prisoners of conscience killed for their organs.

We are not left with an either/or choice. We can and should pursue several options simultaneously. One option is the UN Protocol. Ultimately, UN officials who staff implementation of a treaty take their direction from states parties. While it certainly would be simpler and quicker if UN officials came round on their own, they would have to do so once there is a clear direction from states parties. Though it is too late for this conference, there could and should be, at the next conference of states parties, if there is no movement from UN officials on this issue by then, a resolution stating unequivocally that the current Protocol applies to the sale to transplant tourists of organs sourced from prisoners.

So the course of action I suggest, in sum, is this:

- 1) Continue to request that the United Nations Office of Drugs and Crime include organ transplant tourism within its work on organ trafficking;
- 2) Propose to state parties to the UN Protocol that at the next conference of state parties they endorse a resolution that the Protocol encompasses organ transplant tourism;
- 3) Urge all states to adhere to the second Council of Europe Convention; and
- 4) Advocate the drafting of a UN Convention along the lines of the second Council of Europe

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(Remarks presented at a side event to the Conference of States Parties, 7 October, 2014, Vienna, Austria organised by the International Society of Human Rights Section Switzerland)

Convention.

I am pleased to inform you that, for a start, my colleagues in the NGO Doctors against Forced Organ Harvesting (DAFOH) and the International Society of Human Rights - Section Switzerland endorse these recommendations. I encourage others to follow suit.

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David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada.

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